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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision : 22nd March, 2022**

+ **CRL.REV.P. 155/2022 & CRL.M.(BAIL) 301/2022**
RAJENDER SINGH THAKUR Petitioner

Through **Mr. Puneet Khurana & Mr.**
Chandan Rai Chawla, Advocates.

versus

STATE & ANR. Respondents
Through: **Mr. G.M. Farooqui, APP for the**
State

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

CRL.M.A. 5154/2022 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.REV.P. 155/2022 & CRL.M.(BAIL) 301/2022

3. This criminal revision petition under Section 397 read with Section 401 Cr.P.C. is directed against the judgment dated 4th March, 2022 of the learned Additional Sessions Judge-5 (ASJ), South East District, Saket Courts, Delhi, whereby the conviction and sentence passed by the learned Metropolitan Magistrate (Mahila Court), South East District, Saket Courts, Delhi, dated 28th July, 2016 and 17th August, 2016 were upheld.



4. The facts as are relevant for the disposal of this petition may be stated briefly.

5. The petitioner was employed in Bangkok Mart, Lajpat Nagar, where, the complainant also obtained a job as Accountant through 'Monster.com'. On 7th July, 2014, the shop was to be closed early, as the owner's uncle had expired. The shift usually ended up at 7:30 PM, but on that day, the women staff occupying other rooms started to leave around 4 PM but the complainant got late due to heavy paper work. The complainant was able to wrap up to leave around 4:30 PM. At that time, the petitioner is alleged to have held her from behind and she could free herself after much struggle and came out from the back door after arranging the key. Since her initial complaint to Monster.com regarding the incident did not result in any action against the petitioner till 9th July, 2014, she lodged a complaint with the police which was registered as FIR No.455/2014 at Police Station Lajpat Nagar under Section 354 IPC.

6. After investigation, the charge-sheet was filed on 7th August, 2014. Upon being summoned, the petitioner entered appearance on 8th December, 2014. He pleaded not guilty to the charge framed against him on 30th November, 2015, whereafter, the prosecution examined four witnesses. The petitioner also examined himself as a defence witness. On conclusion of the hearing and upon consideration of the material, the learned Trial Court concluded that the prosecution had proved its case beyond reasonable doubt and convicted the petitioner for having committed the offence under Section 354 IPC. This judgment was announced on 28th July, 2016. Vide order on sentence dated 17th August,



2016, the learned Mahila Court sentenced the petitioner to undergo rigorous imprisonment for one year and directed him to pay the compensation of Rs.15,000/- to the victim.

7. Aggrieved by this conviction and sentence, the petitioner preferred Criminal Appeal No.204678/2016 which was heard by the learned ASJ-5, South East District, Saket Courts, Delhi. Upon consideration of all the material as was before the Appellate Court, the learned ASJ found no infirmity in the judgment and order on sentence and accordingly dismissed the appeal.

8. This petition has been filed challenging the conclusions of the learned Appellate Court.

9. Mr. Puneet Khurana, learned counsel for the petitioner, submits that both the courts below have overlooked material flaws in the prosecution's case and therefore, the conviction and sentence was liable to be set aside. It was submitted by learned counsel that both the courts have overlooked contradictions in the testimony of the prosecutrix/complainant. It is the submission of learned counsel that in view of these contradictions, no reliance could have been placed on the sole testimony of PW-1/prosecutrix/complainant to convict the petitioner. It was submitted that whereas in the FIR, it was claimed that the petitioner had held her from behind and declared that he wanted to express and share his feelings for her, there was no such mention subsequently in the testimony as PW-1 of any declaration of the petitioner expressing his feelings.



10. It is further submitted by learned counsel for the petitioner that in the FIR, it is only stated that she escaped from the back door but as PW-1, she claimed that she had managed to come out after arranging the key. Furthermore, the place where the alleged incident had occurred was a public place and yet strangely, the prosecutrix had raised no alarm. Learned counsel urged that delay in filing the FIR reflected that it was registered at the instance of the boyfriend of the prosecutrix, out of enmity and on account of the work that was assigned by the petitioner to the prosecutrix on which she was annoyed with him. Finally, it has been submitted that in the DD No.23A, there was a reference to not only the petitioner but some senior also and the allegation was that there was an attempt to rape. Therefore, the entire story was false and the conviction and sentence was liable to be set aside.

11. Issue notice.

12. Mr. G.M. Farooqui, learned APP for the respondent No.1/State accepted the notice and contended that this being a revision petition, this Court could not evaluate the evidence, as sought by the learned counsel for the petitioner. It was submitted that in all his submissions, the learned counsel for the petitioner has not been able to point out any error in the judgment of either the Mahila Court or the learned ASJ, which requires interference by this Court. Thus, it was prayed that the present revision petition was liable to be dismissed at the threshold.

13. It is well settled that the revisional jurisdiction of the High Court cannot be equated with appellate jurisdiction. In its revisional jurisdiction, the High Court can examine the records of any proceedings



for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. There has to be perversity or unreasonableness, complete misreading of records leading to the court taking into consideration irrelevant material while ignoring relevant material, when alone the High Court would exercise its revisional jurisdiction to set aside such order/judgment.

14. The Supreme Court in ***State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452, while examining the judgment of the Kerala High Court in a criminal revision petition, observed as below :

“5. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.....”

15. This view has been reiterated in ***New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey***, 2019 SCC OnLine SC 1786, in the following words :

“8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C., is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an



inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law.”

16. In a case, though relating to taking of cognizance, the Supreme Court in ***Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others***, (2015) 3 SCC 123 had this to say :-

“14.Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

17. When the stated position in law is clear, the arguments urged before this Court cannot come to the aid of the petitioner, as they are all founded on evaluation of evidence and the evidentiary value to be attached to the testimony of the prosecutrix/complainant, which is beyond the scope of the revisional jurisdiction.



18. In fact, the learned counsel for the petitioner has not been able to point out any perversity in the decisions of or unreasonableness in the conclusions that have been drawn by either of the courts below. The learned counsel for the petitioner did submit that his contentions were not considered by either of the courts below. However, a perusal of the judgment of the learned Mahila Court reveals that the arguments of the learned counsel for the petitioner were recorded in para 9 thereof and these have been discussed in the subsequent paragraphs. Reliance has also been placed on various judgments such as *Vadivelu Thevar Vs. State of Madra*, AIR 1957 SC 614(1), *Namdeo Vs. State of Maharashtra*, (2007) 14 SCC 156, *Kunju @ Balchandran Vs. State of Tamil Nadu*, AIR 2008 SC 1381, to repel the contention of the learned counsel that the sole testimony of the prosecutrix could not be relied upon. Delay and irregularities in the investigation were also considered in the light of the decisions of the Supreme Court in *Paras Yadav Vs. State of Bihar*, AIR 1999 SC 644 and *Ram Bali Vs. State of Uttar Pradesh*, (2004) 10 SCC 598.

19. Similarly, the learned ASJ has listed the various grounds on which the petitioner had assailed the conviction and sentence in para 13 of the judgement. The following paragraphs have discussed these points. With regard to reliability of the sole witness, reliance has been placed on *Amar Singh Vs. State (NCT of Delhi)*, Crl. Appeal No.335/2015 & *Inderjeet Singh Vs. State (NCT of Delhi)*, Crl. Appeal No.336/2015. Delay has been dealt with, placing reliance on the judgments in *Satpal Singh Vs.*



State of Haryana, (2010) 8 SCC 714 and *State of H.P. Vs. Prem Singh*, (2009) 1 SCC 420.

20. Contradictions have been found to be minor, relying on *State of Rajasthan Vs. Smt. Kalki & Another*, (1981) 2 SCC 752 (FB). The plea that since the prosecutrix had not raised any alarm, she could not be believed, has been addressed by the learned ASJ, rightly observing that victims of crime react differently in situations of trauma. The learned ASJ also observed that despite having been subjected to grueling cross-examination, PW-1, namely, the prosecutrix/complainant could not be discredited by the defence.

21. It is thus, more than amply clear that neither court is guilty of non-application of mind or unreasonableness or palpable misreading of records or any perversity. This Court finds no ground whatsoever to interfere either with the judgment and order of sentence of the Mahila Court or the judgment of the Appellate Court.

22. The petition being *ex-facie* meritless, is accordingly dismissed alongwith the pending application.

23. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MARCH 22, 2022/ ck